

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KHALIED MOHAMMAD,  
 Plaintiff,

vs.

STEPHEN B. WOLFSON,  
 Defendant.

Case No. 2:15-cv-00016-APG-GWF

**ORDER**

This matter is before the Court on Plaintiff Khalid Mohammad's Motion for Leave to Proceed *in forma pauperis* (#1).

**BACKGROUND**

Plaintiff Khalid Mohammad alleges that Defendants Stephen B. Wolfson, the State of New Mexico, and Clark County, Nevada, conspired to falsely imprison the Plaintiff from January 30, 2012 to November 10, 2012.

**DISCUSSION**

**I. Application to Proceed In Forma Pauperis**

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed in forma pauperis in federal court is granted.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which

1 relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is  
2 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
3 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
4 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
5 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed  
6 as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke*  
7 *v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is  
8 appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,  
9 whether or not there are judicially noticeable facts available to contradict them.” *Denton v.*  
10 *Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the  
11 plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,  
12 unless it is clear from the face of the complaint that the deficiencies could not be cured by  
13 amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832  
15 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik v.*  
16 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, a liberal construction may not be used to  
17 supply an essential element of the claim absent from the complaint. *Bruns v. Nat’l Credit Union*  
18 *Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673 F.2d 266, 268  
19 (9th Cir. 1982)).

20 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint  
21 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is  
22 essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d  
23 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short and plain statement of  
24 the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*  
25 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual  
26 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
27 elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Papasan v.*  
28 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations

1 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,  
 2 129 S.Ct. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory  
 3 allegations, do not suffice. *Id.* at 1949. Secondly, where the claims in the complaint have not  
 4 crossed the line from plausible to conceivable, the complaint should be dismissed. *Twombly*, 550  
 5 U.S. at 570.

### 6 **III. Prior Complaint**

7 Plaintiff has previously brought similar claims before the Court. *See* 2:14-cv-01290-JCM-  
 8 VCF. In the prior case, the Plaintiff claimed that the unnamed District Attorney, Public Defender,  
 9 and Arresting Officer had caused him to be unlawfully imprisoned from January 30, 2012 to  
 10 September 30, 2012. The Plaintiff's Complaint was dismissed without prejudice and with leave to  
 11 amend on October 23, 2014. The Plaintiff failed to file an amended complaint, and the case was  
 12 dismissed without prejudice on December 3, 2014.

13 Judge Mahan previously screened the Plaintiff's complaint for false imprisonment by  
 14 analyzing his imprisonment as a pretrial detainee. *See* 2:14-cv-01290-JCM-VCF, #2. Judge  
 15 Mahan detailed the law regarding pretrial detainees in the screening order:

16 The Supreme Court has defined a pretrial detainee as a person who  
 17 has been charged with a crime but who has not yet been tried on that  
 18 charge. *Bell v. Wolfish*, 441 U.S. 520, 523 (1979). The Supreme  
 19 Court has held that, to ensure this person's presence at trial, the  
 20 government may legally incarcerate the individual prior to a  
 21 determination of their guilt or innocence. *Id.* at 523, 534 n. 15; *see*  
 also Nev. Rev. Stat. §§ 171.123, 171.1231. The Supreme Court has  
 held that, in order to imprison a person prior to trial, the government  
 must comply with constitutional requirements and statutory  
 provisions. *Wolfish*, 441 U.S. at 534 n. 15.

22 2:14-cv-01290-JCM-VCF, #2, p. 5.

23 Plaintiff, in the prior action, alleged that he was unlawfully imprisoned because he was  
 24 never brought to trial. He alleged no further facts that would support his claim. Judge Mahan  
 25 found that the Plaintiff's complaint did not allege sufficient facts to state a claim because it did not  
 26 provide enough details to determine if there was a violation of the Plaintiff's constitutional rights.

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1 **IV. Instant Complaint**

2 **A. False Imprisonment**

3 Plaintiff bases his claim in the instant action on his pre-trial detention. Plaintiff claims that  
4 the Defendants violated his fundamental right to freedom, due process, and liberty by imprisoning  
5 him without ever bringing him to trial. Plaintiff variously alleges that he was imprisoned from  
6 January 30, 2012 to September 10, 2012, or from January 30, 2012 to November 10, 2012. He  
7 alleges that the Defendants acted to imprison him as part of a scheme to deprive him of these  
8 interests. Plaintiff further claims that he “specifically notified WOLFSON, via legal mail, that the  
9 plaintiff is competent (sic) to stand trial and specically (sic) requested for transportation to court  
10 and a jury trial OR release from imprisonment.” These facts are insufficient to state a claim for  
11 false imprisonment. Plaintiff alleges no facts to show that constitutional provisions were not  
12 complied with, and states no facts to indicate that his pre-trial detention was unlawful. He claims  
13 that, because he was not tried, his imprisonment was unconstitutional. Mere conclusory allegations  
14 are insufficient to state a claim. *Iqbal*, 129 S.Ct. at 1949. The Court will grant Plaintiff leave to  
15 amend his complaint to add more facts and determine if the Plaintiff can properly state a claim for  
16 false imprisonment.

17 **B. Conspiracy**

18 Plaintiff further alleges that the state of New Mexico and Clark County, Nevada are liable  
19 for “promulgating a scheme” that deprived the Plaintiff of his freedom. The Plaintiff alleges that  
20 these entities can be sued under the Monell Standard, referring to *Monell v. Department of Social*  
21 *Services of the City of New York*, 436 U.S. 658 (1978). In order to properly state a claim for  
22 conspiracy, the Plaintiff must show “a meeting of the minds,” or an agreement between the alleged  
23 conspirators to violate the Plaintiff’s constitutional rights. *Franklin v. Fox*, 312 F.3d 423, 441 (9th  
24 Cir. 2003).

25 Plaintiff correctly alleges that a local governmental entity may be sued under Monell for  
26 claims arising under 42 U.S.C. § 1983. However, the Plaintiff alleges no further facts suggesting  
27 that a conspiracy actually existed. He offers no evidence of an agreement or a plan between the  
28 Defendants to deprive him of his liberties. Nothing in Plaintiff’s complaint suggests any

1 connection between the State of New Mexico and the detention in Clark County, Nevada. Mere  
 2 conclusory allegations are insufficient to sustain a claim of conspiracy. *See Woodrum v. Woodward*  
 3 *County, Okl.*, 866 F.2d 1121, 1126 (9th Cir. 1989); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th  
 4 Cir. 1980); *Lockary v. Kayfetz*, 587 F.Supp. 631, 639 (N.D. Cal. 1984). The Court will therefore  
 5 dismiss the Plaintiff's complaint with leave to amend, to allow the Plaintiff a final opportunity to  
 6 present sufficient facts to state his claims.

7 If Plaintiff elects to proceed in this action by filing an amended complaint, he is informed  
 8 that the court cannot refer to a prior pleading in order to make his amended complaint complete.  
 9 Local Rule 15-1 requires that an amended complaint be complete in itself without reference to any  
 10 prior pleading. This is because, as a general rule, an amended complaint supersedes the original  
 11 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended  
 12 complaint, the original pleading no longer serves any function in the case. Therefore, in an  
 13 amended complaint, as in an original complaint, each claim and the involvement of each defendant  
 14 must be sufficiently alleged. Accordingly,

15 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed In Forma Pauperis is  
 16 **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars  
 17 (\$400.00).

18 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
 19 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
 20 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
 21 issuance of subpoenas at government expense.

22 **IT IS FURTHER ORDERED** that Plaintiff's Complaint is **dismissed** without prejudice  
 23 with leave to amend. Plaintiff shall have until **July 6, 2015** to file an amended complaint  
 24 correcting the noted deficiencies.

25 DATED this 4th day of June, 2015.

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 27   
 28 GEORGE FOLEY, JR.  
 United States Magistrate Judge